



DELAWARE COUNTY OFFICE
20 WEST THIRD STREET
P.O. Box 1670
MEDIA, PA 19063
VOICE 610.627.9777
FAX 610.627.9787

ONE LIBERTY PLACE, 52ND FLOOR
1650 MARKET STREET
PHILADELPHIA, PA 19103
VOICE 215.496.8282
FAX 215.496.0999

NEW JERSEY OFFICE
8000 SAGEMORE DRIVE
SUITE 8303
MARLTON, NJ 08053
VOICE 856.751.8383
FAX 856.751.0868

SIMON B. PARIS | PARTNER
DIRECT DIAL 215-575-3986
SPARIS@SMBB.COM

MONTGOMERY COUNTY OFFICE
43 EAST MARSHALL STREET
NORRISTOWN, PA 19401
VOICE 610.278.1591
FAX 610.272.2549

July 28, 2014

VIA ECF FILING

Hon. Jesse M. Furman, U.S.D.J.
United States District Court, S.D.N.Y.
Thurgood Marshall United States
Courthouse, Courtroom 1105
40 Foley Square
New York, NY 10007

Re: In re General Motors LLC Ignition Switch Litigation
14-MD-2543 (JMF)

Dear Judge Furman:

This firm, Saltz, Mongeluzzi, Barrett & Bendesky, P.C. (“SMBB”), is one of the co-counsel in the case of *DePalma et al. v. General Motors LLC et al*, No. 14-cv-05501-JMF, transferred to the MDL from the Middle District of Pennsylvania. Pursuant to Order No. 5, Section II, SMBB submits this application for appointment to an Executive Committee in the above-captioned matter. As demonstrated below, SMBB possess the distinctive characteristic of having prosecuted both individual personal injury and class action product defect cases, including defects with automobiles. SMBB was also one of the 23 firms that worked under lead counsel in *In re: Toyota Motor Corp. Unintended Acceleration*, Case No. 10-ml-02151- JVS (C.D. Cal. April 12, 2010).

In this action, prior to filing its Complaint, SMBB investigated, and was retained by, consumers who purchased “Certified Pre-Owned” defective vehicles from New GM with extended warranties and/or purchased from New GM an extended warranty for the defective

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vehicle.¹ SMBB intended to seek class certification of sub-classes of these warranty purchasers based on New GM's failure to uphold its warranty obligations in failing to repair and/or replace the knowingly defective part as part of New GM's direct, contractual obligation.

Beyond the firm's experience and work in this case, SMBB has both the necessary financial and human resources and is willing and able to commit to this time-consuming litigation, just as it has done in a number of complex matters. Finally, SMBB has always, and will continue to, work cooperatively with others, including the Court's staff, lawyers, and putative class members.

For these reasons, and based on its unique position as having both extensive personal injury and class action experience, SMBB believes it is best suited to serve on the Executive Committee as the liaison with class members and communication with personal injury / wrongful death actions. SMBB requests the opportunity to briefly address the Court at the August 11, 2014, hearing.

1. SMBB's Qualifications to Serve on an Executive Committee

SMBB is one of the finest plaintiffs' law firms on the East Coast, routinely handling the largest and most complex cases over a wide array of practice areas. The firm employs 29 highly-respected attorneys, together with a staff of more than 70 para-professionals, all of whom are focused on achieving the best possible result for the firm's clients. SMBB has achieved more than 200 verdicts or settlements over seven figures for its individual clients, including a \$101 million settlement for the Atlantic City, N.J., Tropicana Casino parking garage collapse; a \$75 million trial verdict for an injured worker; and a \$29.5 million settlement for the collapse of an entertainment pier. The firm has been recognized by U.S. News & World Report as a Tier 1 product liability litigation firm and has handled a wide array of litigation against automobile manufacturers related to alleged defects.²

SMBB's founding partner, Robert J. Mongeluzzi, has been recognized nationally as one of the best trial lawyers in the country. Mr. Mongeluzzi has consistently been ranked second out of Pennsylvania's 48,000 lawyers in the peer-selected Super Lawyers of Pennsylvania. The Associated Press noted that he is "one of the nation's top lawyers." Lawdragon magazine

¹ *DePalma, et al. v. General Motors, LLC*, Case No. 14-cv-00681-YK (M.D. PA Apr. 8, 2014)(ECF No. 1 at ¶¶26-31; ¶¶173-195).

² See, e.g., *Ackley v. Ford Motors*, C.C.P. Phila. Cty., January Term, 2011, No. 1902 (2005 Ford Focus, side air bag defect); *Weingarten v. Ford Motors, et al.*, C.C.P. Phila. Cty., April Term, 2011, No. 2428 (tire defect); *Rummock v. Ford Motors*, C.C.P. Phila. Cty., March Term, 2008, No. 0237 (Mustang fire, no impact); *Humphreys v. General Motors, LLC*, C.C.P. Phila. Cty., May Term, 2006, No. 1081 (fuel system defect); *Scott v. General Motors, LLC*, C.C.P. Phila. Cty., April Term, 2001, No. 4701 (latch defect); *Robinson v. Chrysler*, C.C.P. Phila. Cty., October Term, 1998, No. 0327 (seat belt failure).

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selected him as one of the 500 best attorneys in America. He was named Philadelphia's 2009 Litigator of the Year and in 2014 was awarded a Lifetime Achievement Award by Philadelphia's Legal Intelligencer newspaper.

Recognizing the potential synergy in practice, in 2007, SMBB expanded its presence in the field of plaintiffs' litigation by adding a team of lawyers specializing in class action practice, led by Simon B. Paris. The group focuses on the prosecution of antitrust, consumer, employment, and securities class actions in federal court.

Since expanding its practice, and beyond working on the *Toyota Unintended Acceleration* MDL, SMBB has served in leadership or executive committee roles in a variety of successful complex, nationwide class actions. Relevant here, the firm recently served as lead counsel in the nationwide product defect class action *Trabakoolas v. Watts Water Technologies*,³ which recovered \$23 million for the marketing and sale of an alleged defective plumbing product. SMBB also served as co-lead counsel in *Cirulli v. Hyundai Motor America, et al.*,⁴ an automobile defect case related to the spontaneous failure of the sub-frame, which resulted in a settlement that allowed for repair, replacement or reimbursement.

2. Work Done to Identify, Investigate or Prosecute Potential Claims

Together with co-counsel, Donovan Axler, SMBB researched, drafted and filed a complaint that asserts claims and theories that will support and sustain a consumer class action against New GM regardless of the ultimate decisions by the bankruptcy court.

SMBB approached the litigation with the understanding of the gravity and scope of the potential claims against New GM. Certainly, SMBB had access to a multitude of GM vehicle owners and could have filed multiple cases in various jurisdictions. However, knowing that the public, media and government are all watching closely, SMBB wanted to demonstrate in the complaint not only the potential perils created by GM's failure to recall, but also that, despite its public protestation, New GM faces direct liability for the warranty agreements it entered with various consumers across the country.

While Plaintiff DePalma had three head on collisions in a 2007 Cobalt without airbag deployment, the other two plaintiffs in the complaint purchased either a "Certified Pre-Owned" or an extended warranty directly from New GM. Both warranty plaintiffs returned to GM dealerships during the warranty period with issues related to their ignition switch. Plaintiff McCann returned his Cobalt multiple times during both the glove box warranty period and the extended warranty period. During one visit, Mr. McCann made the contemporaneous note on the service record, "what about ignition bad – not keys." In 2010, during the extended warranty

³ Case No. 12-cv-001172-WHO (N.D. Cal. March 8, 2012).

⁴ Case No. 08-0854-AG (MLGx) (C.D. Cal. July 1, 2008).

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period, the key became stuck in the McCanns' ignition requiring the dealership to remove it. Plaintiff Pollastro's "Certified Pre-Owned" Cobalt came with New GM's representations that the vehicle was "inspected and re-conditioned" including the keys and ignition system. In 2011, only months after his purchase and during the warranty period, Plaintiff Pollastro's key became stuck in the ignition's "on" position requiring the dealership remove it. New GM, with full knowledge of the defect, failed to uphold its warranty obligations to both Plaintiff McCann and Pollastro; and therefore, each has a valid breach of express warranty claim against New GM.

Additionally, after the complaint was filed, SMBB served preservation letters on the various dealerships that were housing the named plaintiffs' vehicles until they were repaired. As each named plaintiffs' vehicle was repaired, SMBB discussed the preservation of the ignition switch with the various service managers, and corresponded with GM's counsel in this matter about maintaining the evidence. SMBB also hired a private investigator to retrieve records related to the accident scenes of Plaintiff DePalma's three accidents in his 2007 Cobalt. Finally, utilizing both its experience and contacts from other automotive defect cases, SMBB retained a consulting expert to ensure that no evidence would be lost as part of the replacement protocol and to gain the best understanding of the defect.

Finally, SMBB has been in near constant contact with the named plaintiffs as they respond to letters and inquiries from GM about their vehicles and the necessary repairs. SMBB has also responded to inquiries from potential class members who have contacted the firm seeking advice and direction.

3. Knowledge of Applicable Law

SMBB has litigated dozens, if not hundreds, of product defect, breach of express and implied warranty cases in both individual and class actions across the country. As a result, SMBB is fully versed in the applicable law and the nuances in various state applications.

4. Willingness and Ability to Commit

SMBB does not have a volume practice, but instead selectively chooses the matters in which it devotes its resources. By submitting this application, SMBB has fully committed both its financial and human resources to pressing the litigation forward.

Indeed, since filing the complaint, SMBB participated in the April 28 meeting of plaintiffs' counsel, the May 2 bankruptcy court hearing, filed papers with and argued before the MDL panel for transfer to the Middle District of Pennsylvania on May 29, and appeared for the meeting of plaintiffs' counsel on July 1. SMBB is committed to the litigation.

5. Access to Resources

SMBB has achieved more than 200 verdicts or settlements over seven figures for its clients. In 2012, SMBB had nine of the top 50 largest awards and settlements in Pennsylvania as

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reported by PaLaw Magazine. Between 2007-2013, SMBB had 35 of the top 50 settlements in Pennsylvania, the most in the state, and as many as the next two firms combined. The firm is not only liquid with funds available to commit to this litigation, but also has access to an extensive credit line.

Additionally, with 29 attorneys, and a staff of more 70 para-professionals, SMBB has the necessary resources to fund and staff the litigation.

6. Willingness and Ability to Work Cooperatively

The lawyers at SMBB pride themselves on their willingness and ability to work cooperatively. SMBB has worked with Temporary Lead Counsel, Steve Berman and the members of his firm, on multiple class action cases, including all the matters referenced above, *Toyota*, *Trabakoolas*, and *Cirulli*. Additionally, in personal injury matters, SMBB led the effort coordinating all of the individual claims stemming from Atlantic City, N.J., Tropicana Casino parking garage collapse as well as the sinking of the “Ride the Ducks” boat on the Delaware River with more than 40 passengers on board – a case that ultimately went to trial in Federal Court. Both cases resulted in eight and nine figure recoveries for the plaintiffs.

7. Geographic Diversity

All three Temporary Lead Counsel are based on the West Coast. As an Executive Committee member, SMBB would bring both diversity and proximity to the Court. SMBB’s lawyers regularly make the short train commute from Philadelphia to New York. SMBB can be present for morning sessions in Court without incurring the expense of a costly downtown hotel room.

8. Specific Executive Committee Assignments Requested

Based on its unique position as having both extensive personal injury and class action experience, SMBB believes it is best suited to serve on the Executive Committee as the liaison with class members and communication with personal injury / wrongful death actions.

Counsel will be present at the August 11, 2014, hearing to answer any questions the Court may have about this application.

Respectfully submitted,

s/ Robert J. Mongeluzzi

s/Simon B. Paris

Robert J. Mongeluzzi

Simon B. Paris

cc: Counsel of Record via ECF